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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Implement the
Commission's Procurement Incentive Framework and to
Examine the Integration of Greenhouse Gas Emissions
Standards into Procurement Policies.

Rulemaking 06-04-009
(Filed April 13, 2006)

**RESPONSE OF THE NATURAL RESOURCES DEFENSE COUNCIL, UNION
OF CONCERNED SCIENTISTS, THE UTILITY REFORM NETWORK,
ENVIRONMENTAL DEFENSE FUND, CENTER FOR ENERGY EFFICIENCY
AND RENEWABLE TECHNOLOGIES, AND WESTERN RESOURCE
ADVOCATES TO THE PETITION FOR MODIFICATION OF D.07-01-039
BY SOUTHERN CALIFORNIA EDISON COMPANY**

February 27, 2008

Audrey Chang
Natural Resources Defense Council
111 Sutter St., 20th Floor
San Francisco, CA 94104
415-875-6100
AChang@nrdc.org

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1. Introduction and Summary

In accordance with Rule 16.4 of the California Public Utilities Commission's (CPUC or Commission) Rules of Practice and Procedure, the Natural Resources Defense Council (NRDC), Union of Concerned Scientists (UCS), The Utility Reform Network (TURN), Environmental Defense Fund (EDF), the Center for Energy Efficiency and Renewable Technologies (CEERT), and Western Resource Advocates (WRA) respectfully submit the following response to the petition for modification of Decision (D.) 07-01-039 (Decision) filed by Southern California Edison Company (SCE) on January 28, 2008 and amended on February 12, 2008. In accordance with Rule 16.4(f), which states that a response to petitions for modifications "must be filed within 30 days of the date that the petition was filed," this response is timely filed.

We continue to strongly support D.07-01-039, which adopted the implementing rules for the greenhouse gas (GHG) emissions performance standard (EPS) required by Senate Bill (SB) 1368. In its Petition, SCE requests a modification of D.07-01-039 to allow for a general exemption from the EPS for *any* financial contribution required by existing contractual arrangements that were effective prior to January 25, 2007, citing as

an example its co-tenancy agreement for the Four Corners coal-fired power plant. SCE's petition for modification is without merit and would simply weaken the EPS established by SB 1368, and we urge the Commission to deny the Petition. To the extent that the Commission finds merit in SCE's concerns, any clarification of D.07-01-039 about how the EPS applies to investments made under pre-existing multi-party contracts should be limited to the case-by-case process recommended herein.

2. Long-term financial commitments to generation sources that do not meet the EPS must be carefully examined to ensure compliance with SB 1368.

SCE states that “application of the EPS Decision to preclude SCE’s future investment in Four Corners will conflict with SCE’s contractual obligation to financially support Four Corners, contravene the EPS Decision’s stated intention, and harm SCE and its ratepayers.”¹ SB 1368 defined “long-term financial commitments” as “either a new ownership investment in baseload generation or a new or renewed contract with a term of five or more years, which includes procurement of baseload generation.”² Joint ownerships, co-tenancy agreements, or joint power arrangements, can constitute types of existing contracts. However, in the event that a retail provider recommits or refinances its involvement or changes its stake in such a joint ownership, this would represent a new financial commitment that must be subject to the requirements of SB 1368. SB 1368’s intent, reflected in D.07-01-039, is to protect California consumers from the significant financial risk associated with high-GHG emitting generation sources, and any financial commitment with these sources must be carefully evaluated to ensure compliance with the law.

3. A general exemption for existing contractual agreements would weaken the EPS established by SB 1368.

Citing its specific financial obligations to the Four Corners plant, SCE broadly requests that the CPUC “modify the EPS Decision to find that financial contributions required under preexisting contractual obligations for generating units owned jointly with

¹ Petition at 2.

² Public Utilities Code §8340(j).

third parties are not ‘covered procurements’ under the EPS.’³ Thus, SCE proposes to change the Decision’s definition of a “covered procurement” by exempting “financial contributions required by existing contractual agreements (effective prior to January 25, 2007)” that otherwise would trigger the EPS.⁴

The general exemption that SCE requests is too broad and would weaken the EPS. The nuances surrounding whether a change in stake of a joint ownership or co-tenancy agreement has occurred, or whether a given investment is truly “required” are not straightforward or transparent circumstances that merit blanket exemption from the EPS. Such investments in high-GHG emitting baseload resources present significant financial risk to customers – which SB 1368 was designed to prevent – and should be subject to specific, case-by-case Commission review. As SCE itself notes in its Petition, “the EPS Decision triggers the EPS for Four Corners because SCE’s contemplated future investments are intended to extend the plant’s life through 2016.”⁵ Investments that could seem to meet the Decision’s definition of a covered procurement subject to the EPS must be carefully considered before allowing any exemption to SB 1368 compliance.

4. An Advice Letter process to allow for case-by-case review of financial commitments required by existing contractual arrangements is a more appropriate means of addressing the concerns raised by SCE’s Petition.

If the Commission finds merit in the concerns raised by SCE’s Petition of the need for clarification of how these investments should be handled in terms of determining EPS compliance, case-by-case review of each particular circumstance under which such financial commitments are made is absolutely necessary and is an important part of enforcing the EPS. Specific exemptions therefore should be granted on an individual pre-approval basis.

To be consistent with the procedural process established by D.07-01-039 for EPS compliance, we recommend that all retail providers request exemptions for specific investments required under existing contractual arrangements through Advice Letter filings with required service to this proceeding or its successor. IOUs should also serve

³ Petition at 5.

⁴ Amended Petition at 2.

⁵ Petition at 6.

these Advice Letter filings to the procurement proceeding (R.08-02-007) or its successor. The burden of proof should be on the retail provider to demonstrate that each proposed investment under an existing contractual arrangement is in fact a required and necessary investment, and that the retail providers' joint ownership terms have not changed since the threshold date used to define "existing" contracts.

5. The effective threshold date for "existing" contractual arrangements should be defined to be September 29, 2006.

SCE recommends that existing contracts be defined as those that are effective prior to January 25, 2007, the effective date of the Decision. However, both the intent and the specific language of SB 1368 were well-known prior to this date. We strongly recommend that the Commission adopt September 29, 2006, the date the Governor signed SB 1368 into law, as the effective threshold date for "existing" contracts. This is the threshold date that was used to prevent several publicly-owned utilities in the state from extending their existing contracts for conventional coal power in late 2006 in a deliberate attempt to circumvent the intent of the law.

6. Conclusion.

SCE's petition for modification of D.07-01-039 for a general exemption for financial contributions required by existing contractual agreements is without merit, and we respectfully urge the Commission to reject this petition. If the Commission finds merit in the concerns raised by SCE, we recommend the Commission clarify the Decision only to allow for case-by-case review of such investments and possible individual exemptions as described herein.

Thus, instead of a general exemption to the definition of "covered procurements" as SCE proposes, we recommend an additional Finding of Fact and Ordering Paragraph be added to the Decision as follows:

Finding of Fact:

An Advice Letter filing for pre-approval of financial contributions required by existing contractual joint ownership agreements is a reasonable procedural vehicle to determine case-by-case exemptions to EPS compliance,


provided LSEs can sufficiently demonstrate that the proposed investments are in fact required by the existing contractual agreement, and that the existing contractual agreement and ownership status were effective prior to and unchanged as of September 29, 2006.

Ordering Paragraph:

Any LSE requesting review and pre-approval of an exemption from the EPS rule for financial contributions required by existing contractual joint ownership agreements shall file an Advice Letter in both this proceeding or its successor and the procurement proceeding (R.08-02-007) or its successor. The LSE shall provide documentation demonstrating that such procurements are in fact required by the existing contractual agreement, and that the existing contractual agreement and ownership status were effective prior to and unchanged as of September 29, 2006. These advice letter filings, as well as any responses or protests, shall be served on the service list in this proceeding or its successor proceeding. The advice letter shall be subject to the Commission procedures governing advice letter filings, which include opportunity for protests and responses. However, no advice letter submitted for this purpose shall be “deemed approved” under those procedures.

Dated: February 27, 2008

Respectfully submitted,



Audrey Chang
Staff Scientist

Natural Resources Defense Council
111 Sutter St., 20th Floor
San Francisco, CA 94104
415-875-6100
AChang@nrdc.org

Also on behalf of:

Union of Concerned Scientists [Cliff Chen, Senior Energy Analyst]

The Utility Reform Network [Nina Suetake, Staff Attorney]

Environmental Defense Fund [Virgil Welch, Staff Attorney]

Western Resource Advocates [John Nielsen, Energy Project Director]

Center for Energy Efficiency and Renewable Technologies [Rachel McMahon, Director
of Regulatory Affairs]

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the **“Response of the Natural Resources Defense Council, Union of Concerned Scientists, The Utility Reform Network, Environmental Defense Fund, Center for Energy Efficiency and Renewable Technologies, and Western Resource Advocates to the Petition for Modification of D.07-01-039 by Southern California Edison Company”** in the **matter of R.06-04-009** to all known parties of record in this proceeding by delivering a copy via email or by mailing a copy properly addressed with first class postage prepaid.

Executed on February 27, 2008 at San Francisco, California.



Shari Walker
Natural Resources Defense Council
111 Sutter St., 20th Floor
San Francisco, CA 94104
415-875-6100
Swalker@nrdc.org